

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE VENTURA,
Plaintiff,

Hon. Hugh B. Scott
v.

01CV434E

Order

DR. SINHA, et al.,
Defendants.

Plaintiff in this action has applied (for the fourth time, see Docket Nos. 10, 26, 42; see also Docket Nos. 14, 29, 43 (orders denying application)) to the Court for appointment of counsel pursuant to 28 U.S.C. § 1915(e). (Docket No. 51.)

Under 28 U.S.C. § 1915(e), the Court may appoint counsel to assist indigent litigants. Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc., 865 F.2d 22, 23 (2d Cir. 1988). Assignment of counsel in this matter is clearly within the judge's discretion. See In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1986). The factors to be considered in deciding whether or not to assign counsel are set forth by the Second Circuit in Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). Counsel may be appointed in cases filed by indigent plaintiffs where it appears that such counsel will provide substantial assistance in developing petitioner's arguments, the appointment will otherwise serve the interests of justice, and where the litigant has made "a threshold showing of some likelihood of merit." Cooper v. A. Sargent Co., 877 F.2d 170, 174 (2d Cir. 1989).

Plaintiff has not added any new facts from his previous applications for counsel. For example, he claims that he has been transferred to a different facility, but he has been at that facility for the last few years (cf. Docket No. 26, filed July 14, 2003). The Court has reviewed the facts presented herein in light of the factors required by law. Based on this review, petitioner's renewed motion for appointment of counsel (Docket No. 51) is **DENIED** **WITHOUT PREJUDICE AT THIS TIME.**

It remains the plaintiff's responsibility to retain his own attorney or to press forward with his lawsuit pro se. 28 U.S.C. § 1654.

So Ordered.

s/HBS

Hon. Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
April 26, 2005